could have back the vehicle in question upon paying of the arrears of instalments, and arrears of interest due on overdue instalments, cost of storage, cost of repossession and cost of delivery. Such a notice was sent on June 27, 1969. The point was that if the date of possession was correctly May 12, 1969, this was out of time. U.E. then advised itself that the date of possession was not the date of physical recovery but the date when the tractor was brought to its workshop in Sandakan. If that was so, the notice would have been in time. But their legal advisers felt some doubt about it and found in section 40 Hire Purchase Act, 1967 provisions for the application to a magistrate for extension of time. They therefore made due application to the magistrate, giving notice to the appellant's solicitors. At the hearing, both parties were present. After hearing both counsel, the magistrate made the order giving U.E. 14 days from the date of the order to serve the notice under section 15(3). The order was made on terms. The Order was made on September 23, 1969 and on the same day, U.E. served the required notice on the appellant. It was not contended by the appellant that the magistrate had no powers to make the order he did, but nevertheless counsel for the appellant did launch an attack on the order. This is all the more surprising since he acknowledged in his Petition of Appeal that the terms were unduly harsh on U.E. Now the first term was that no instalment or interest was deemed to have fallen due or accrued between May 15, 1969 to the date of the order. The fact was that all the instalments under the Agreement had fallen due. No other instalments were due. And U.E. claimed the same interest as in the earlier notice; in other words it complied with this term by not claiming further interest. The same applied to the ban on further cost of storage. The other two terms preserved the right of the appellant to contest the reasonableness of the charges and any claim for loss of income from being deprived of the use of the tractor. It is difficult to see what the appellant is complaining about. But it was contended that since no instalments were due from May 15 to September 23, 1969, the notice under section 15(3) during that period was null and void. Even if this could be argued in respect of the notice of June 27, 1969, it could not affect the validity of the notice of September 23, 1969, so that there had been compliance by U.E. with section 15(3).

The second matter concerned the sum of $9.840 for costs of repossession and storage. The appellant did not dispute the quantum but only denied in his defence any liability to pay it. However he had contractually undertaken to pay such costs and expenses and he could not thereafter dispute his obligation to pay the actual costs incurred.

As for the dismissal of his counterclaim, the appellant's first contention that the notice under section 15(3) dated September 23, 1969 was bad has been disposed of. His second was that the vehicle was so defective that it amounted to a fundamental breach which went to the root of the contract. The fact was however that the damage to the vehicle did not come from defective parts or workmanship as in the warranty but was caused by heavy usage and by the fire which it caught. The cases relied on by him are of no relevance, since it was not a case of breach of warranty.

For these reasons I would dismiss the appeal with costs here and the court below and order the deposit to be paid to the respondent towards its taxed costs.

Lee Hun Hoe C.J. (Borneo) and **Charles Ho J.** concurred.

Appeal dismissed.

Solicitors: *W.K. Loo & Co.; Rayner & Co.*

PUBLIC PROSECUTOR v. OH KENG SENG

[F.C. (Suffian L.P., Raja Azlan Shah and Wan Su'eiman F.JJ.) June 22, 1977]

[Kuala Lumpur — Federal Court Criminal Appeal No. 36 of 1976]

Criminal Law and Procedure — Sedition — Whether speech has seditious tendency — Transfer of case from Sessions Court to High Court on certificate of Public Prosecutor — Criminal Procedure Code (F.M.S. Cap. 6), s. 418A — Federal Constitution, Article 8(1) — Sedition Act, 1948, s. 3.

Sedition — Seditious tendency — Sedition Act, 1948, s. 3.

Constitutional Law — Freedom of speech — Federal Constitution, Article 8.

In this case the respondent had been charged with uttering seditious words in a speech delivered by him (the full translation of which was attached to the charge). The case was originally brought in the Sessions Court but was later transferred to the High Court on a certificate signed by the Public Prosecutor under section 418A of the Criminal Procedure Code. The respondent was acquitted without being called for his defence. The Public Prosecutor appealed.

Held: (1) the respondent had gone beyond the limits of freedom of speech. There were passages in the speech which were not legitimate criticism of the sort permissible under section 3(2) of the Sedition Act but were utterances clearly having a seditious tendency of the sort envisaged in both sections 3(1)(a) (to bring unto hatred or contempt or to excite disaffection against the Government) and 3(1)(c) (to promote ill-will between the ethnic groups in Malaysia) of the Sedition Act, 1948;

(2) section 418A of the Criminal Procedure Code is not unconstitutional and it was lawful and proper for the High Court in this case to proceed with the trial on a transfer of the case to it under that section.

Cases referred to:-

(1) *Datuk Haji Harun bin Haji Idris* v. *Public Prosecutor* [1977] 2 M.L.J. 155, F.C.

(2) *Fan Yew Teng* v. *Public Prosecutor* [1975] 1 M.L.J. 176; [1975] 2 M.L.J. 235, F.C.

FEDERAL COURT.

P. Mahalingam (Deputy Public Prosecutor) for the appellant.

Yeap Ghim Guan for the respondent.

Wan Suleiman F.J. (delivering the judgment of the Court): This is an appeal against the acquittal of the accused, respondent before us, of the following charge:

"That you on June 23, 1972 between 8.40 p.m. and 9.35 p.m. at the Padang Besar, Tampin, in the District of Tampin, in the State of Negeri Sembilan, uttered seditious words in Mandarin (the full translation of the text of which is attached

as Schedule 'A' to this charge) and that you have thereby committed an offence under section 4(1)(b) of the Sedition Act, 1948 (Revised 1969) and punishable under section 4(1) of the said Act."

The accused/respondent was originally charged in the Sessions Court, the case being subsequently transferred to the High Court on a certificate signed by the Public Prosecutor under section 418A of the Criminal Procedure Code. A preliminary objection was raised by learned counsel for the respondent in the High Court on the question of the validity of section 418A. The substance of his arguments was that that section violates article 8(1) of the Constitution and is therefore null and void, the result of which would make the trial before the High Court in consequence of such transfer void.

The learned trial judge overruled this objection, which was then again raised before this court. It would suffice for us to say that we agree with the learned judge that section 418A is not unconstitutional for the reasons set out in the judgment of this court in *Datuk Haji Harun bin Haji Idris* v. *Public Prosecutor.*[1] It would therefore follow that it is lawful and proper for the High Court to proceed with the trial on a transfer of the case to it under that section.

On the date in question the Democratic Action Party held a rally at Tampin in support of a Malay member of the party who was a candidate at a local by-election and one of the speakers at the rally was the accused who spoke in Mandarin. The police recorded the accused's speech on tape and subsequently had it transcribed and translated into English, which translation was annexed to the charge. The translation of the whole speech was as follows:

TRANSLATION OF OH KENG SENG'S TAPE-RECORD SPEECH AT THE DAP PUBLIC RALLY ON 23 JUNE 1972 AT TAMPIN

"Various dear Malaysian compatriots...(met with the booing of UNITED MALAY NATIONAL ORGANISATION (UMNO) supporters.) This is the way of the ALLIANCE all along. They, because they dislike the DEMOCRATIC ACTION PARTY (DAP). When they see us, they are frightened. Fifteen of us can make a thousand supporters to be afraid. Therefore, today's by-election is very meaningful. The ALLIANCE must let out plenty of money over here. In ULU SELANGOR, I estimated the ALLIANCE, the MALAYSIAN CHINESE ASSOCIATION (MCA), spent $500,000 to participate a by-election. $500,000 to strive for a Member of Parliament (MP). That $500,000 included the buying over of our two crossover MPs. Those two crossover MPs, he being induced by money, so joined the MCA. On the Polling day, they went to ULU SELANGOR, to visit the polling booths. They thought it was very glorified. In fact, they were chided by the small, small children of ULU SELANGOR as running dogs. They rub the tails and ran away. This is the showing of a person without moral integrity.

Today, we, the DAP, come here to knead out a more terrifying, dirtier, more fearful political enemy than the *MCA, which is, the UMNO.* However, we are not afraid. We, the DAP, also have our stand. Ours, this is a type of political movement. We want to xx xx with it to the end. Therefore, if only the people support us, support our movement, we will not run away. We are unlike our GOH HOCK GUAN, former comrade GOH Hock Guan, running away at the time of MAY 13. When the people required his leadership, he slipped away. This type of person, how can he become a leader? So, at present, we, the DAP are taking disciplinary action to deal with those opportunists, those who are greedy and fear death, within the party. Comrade GOH Hock Guan, though very good in his eloquence, however, he has not the ability of that sort of leader. At the time of MAY 13, we all knew that at time of facing difficulty, we needed some talents like LIM Kit Seng, to lead us. However, these xx xx so comrade GOH Hock Guan who is greedy to live and afraid to die, dared not face reality. He was afraid to be arrested by the Government and put to jail. So he ran to SINGAPORE, ran to BRITAIN, then ran to HONG KONG, he wrote a letter to comrade CHEN Man Hin, resigning from his post of Secretary-General. These are the ones who are greedy to live and afraid to die. The comrade within our party showed dissatisfaction over such action of his. However as the party is a huge organisation, a political movement, therefore we required plenty of talents. If only that party member could give contribution to the party, although he had mistakes in the past, we were able to give him a chance. So, in the past two years, the party gave a chance to GOH Hock Guan, to enable him to become the party's organisation, to make contribution to the party. But GOH Hock Guan, this proud, boastful person, he said 'I am a born leader. I want to lead others and not to be led by others.' Right! If a leader can lead the people, if what he said right, we should support him. However, on this day, MAY 13, when the people needed the leader, he just slipped away. Such type of person has proved that he is not a leader. Therefore, a little while later, the Secretary-General of our party, comrade LIM Kit Siang, he will come over here and explain in detail to all of us the reasons why on this occasion the DAP adopted disciplinary action to deal with such party members as GOH Hock Guan, SORRIAN.

Today, I want to make use of this opportunity to speak to you all some very important problems. These problems include our education, our economy, our culture, how we, the Malaysian people, under the control of the ALLIANCE Government show our dissatisfaction towards the government. In 1969, the DAP received the support of many people, which enabled us to obtain the Parliamentary and State assembly seats of this State. This can prove that the stand of the DAP is right. Our striving for a Malaysian MALAYSIA is right. However, in 1969, due to the failure of ALLIANCE Government; failure in the General Elections; in SELANGOR, opposition parties obtained 14 seats, ALLIANCE obtained 14 seats, they could not get the ruling power, they could not become Mentri Besar. DAP requested the Government to hold another by-election to see who could obtain the State Government of SELANGOR. Our condition made the ALLIANCE to be in great fear. *Therefore they brought about the MAY 13 incidents. In the MAY 13 incidents, we all knew who created it. We, the DAP challenged the Government, asking it to set up a Commission of Inquiry to investigate into MAY 13, who caused it. Many people died in MAY 13, who was responsible for it? This was brought about by some racialists. Some who feared to lose his position, he who feared of not becoming the Mentri Besar, he who feared of not becoming State Assemblyman, he who feared of not becoming Member of Parliament. Therefore he brought about a May 13 incidents.* I shall give an example. Just like in a football tournament or a basketball tournament, why do they fight suddenly in the process of play? Who created it? Was it created by the winning side? No, it was certainly created by the losers. So, the same conditions apply in politics. *MAY 13 was created by those losers. Why was the government afraid? Why did it not want a Commission of Inquiry to investigate into the truth? Why did the* MCA *have no courage to stand out and explain to the* people? *Therefore, the MCA and the UMNO, they are* indulging in *racialism, in dirty politics. They want to intimidate, using bloodshed to intimidate the* people. They say that if the DAP were to be in power, the country will be in confusion, there will be bloodshed in the country. This is used to intimidate the people. If the DAP were in power, this proves that the Malaysian people, including the Chinese, Indians and Malays, are supporting the DAP. If the Malaysian people were in support of us, then how could there be bloodshed in the country? How could there be riots? This is created by the leaders of the MCA, the leaders of the UMNO, to intimidate the people. It means that except the ALLIANCE, other political parties are unable and not qualified to be in power. But you all know, what talents are there in the ALLIANCE? Their Ministers, their Chief Ministers, their Mentri Besar, do they have sufficient qualifications? The Chief Minister of MALACCA is a settler of 'FLDA', a rubber tapper. Their Ministers, some have just passed the Junior Middle, some are just working staff. LEE San Choon, what was he doing formerly? Today he is a millionaire. What was he doing

formerly? An ordinary clerk. Does he become a Minister at birth? *There are some Malay Ministers who are not qualified to be Ministers. However, as they are extreme, they can talk, they can shout slogans. Therefore they are seated high up* at the top. *But, one day, after their opporuntiy becomes shaky, one day, when the people do not support them thereafter,* they would *create turmoil, hoping to confuse these matters.* What was done by these persons is also attributed to the opposition parties. This is not true. Therefore, we, the DAP, want to tell the people these facts. We are not afraid to be jailed. We want to face reality. LIM Kit Siang has been jailed. He has proved that he is a leader.

Hence the Government is afraid of the opposition parties. They amended the Constitution in the parliament. They passed the Sedition Bill, prohibiting the opposition parties not to talk about the education problem, not to talk about citizenship matter, not to comment on matter concerning the special rights of the Malays. In the parliament, all the DAP and PEOPLE'S PROGRESSIVE PARTY (PPP), two political parties, had the courage to oppose the Sedition Bill. But the MPs of the MCA, he raised the hand in the parliament, in support of the Sedition Bill, not to talk about these education problems. At present, *MERDEKA University must not be mentioned also, no, not to be discussed. It is an offence to discuss MERDEKA University, liable to be jailed. Where is the MCA? Has the MCA been dissolved? Why can't the MERDEKA University be discussed? what is the MCA striving? Most important is education. Chinese education, the most important. If the MERDEKA University cannot be discussed, what else can we discuss? The newspaper of a few days ago, MCA MAJU Ward, KUALA LUMPUR, it supported the Government's proposal, to have another 'Kung Chung' University. What sort of university is this 'Kung Chung' University? It is a university for the Malays, not a Chinese University. MCA supports* the Malay *University.* People want it to strive for MERDEKA University. It has not the courage, the bravery, has not the means to strive for it. Now, it wants to support a 'Kung Chung' University. At the time of KHAW Kai Boh's term of service, he started a Tengku ABDUL RAHMAN College. What is this College? It is meant for those who have passed Senior Cambridge to study and not for those who have passed Senior Middle. *We strive for MERDEKA University and could* not *get it. MCA then started a Tengku ABDUL RAHMAN College, equivalent to lower Form* VI class. This is what it has applied for and received. *What it can do, at the most, it can start a college and this is not a college for the Chinese, it is a college for the English educated.* This is what the MCA up till today, can do for the Chinese.

In this REMBAU/TAMPIN Constitutency, there are four State Assemblymen. These four Assemblymen are ALLIANCE State Assemblymen. The State Assemblyman of Tampin, this very big very big State Assemblyman, this extremist, after the Mentri Besar, then it is he. He occupies the No. 2 chair in the State Assembly. In the previous State Assembly meeting I had enquired from the Government about matters concerning TAMPIN New Village, the health conditions, street lamps and road problems. 'MOHD. TAHA' stood up to refute me. He said, 'TAMPIN New Village is my Constituency, you, OH Keng Seng, it is best for you not to mention about it. You better go back and look after your constituency first'. However, we all know, having won the election, did 'TAHA' go to visit TAMPIN New Village? *Did he look after the interests of TAMPIN New Villagers? I believe he did* not. *It is because this New Village is almost 100% Chinese, he did not go to visit. Hence these UMNO, ALLIANCE, MCA Councillors, they only look* after *their interests.* Everyday, they are after their own interests, to see how much money they make today, how much money they make tomorrow. Today, they take the licence of the bus company; tomorrow, they will apply for timber logging. These are their interests since they won the election. What they are striving for are these. They do not care about the people's life or death, the suffering of the people's living. Prices of commodities are rising high, yet they do not care. I believe who is the supporting cast of MCA in TAMPIN. His buses, and the bus licence is also taken by him. What do they want? Licence! Those Logging areas, those mining lands, JELEBU, JELEBU has plenty of mining lands. To whom do the government distribute those mining lands? They are also given to the relatives of those State Assemblymen, his elder brothers, his younger brothers, even his wife too, get them. Those mining lands are very valuable. Since they won the election, they want to apply for themselves. Many of them dared not apply. They put in the names of their relatives, their friends. These are the things done by the MCA people and the State Assemblymen. We, not only dare to expose them at the mass rally; in the State Assembly, we also dare to expose in like manner. Our Comrade, Lee Geok Shean, in the previous State Assembly meeting, had spoken about the ALLIANCE Government, allotting a piece of 500-acre land, planted with rubber, ready for tapping, to an MCA leader in KUALA PILAH, one surname LEE. 500-acre of land, allotted to one person! Is this corruption or not? How can it be done like this? It is hard for the people to apply for 2-acre of land! Government is allotting the 500-acre of land to that MCA leader. so 'Encik TAHA' had no means of replying to this question. He said, 'This question, is a matter of long, long ago. We can assure that such thing will never happen again'. His reply in this way will prove that this is a fact, Government has done such thing, giving a 500-acre piece of land, ready for tapping land, an income yielding land, to a person of MCA. However, there are many poor people, thousands and thousands of poor people, who even do not have the means of applying for 2-acre of lands. Having applied for 10 years, 20 years, some even have applied for 30 years, they want cultivation land, housing site, they have no means of obtaining them. MCA said, 'Do you all want housing land? Want cultivation land, isn't it? Join MCA and you will have'. I tell you, 2-acre of land, have it for what? Eat and not be filled, starve and will not die. 2-acre of land, for the sake of 2-acre of land, join MCA, there is no meaning. We use our own labour to earn money, save it up, can buy 10-acre of land. We are not hard-up of that 2-acre of land of his. *For the sake of 2-acre of land, sell out the interests of the Chinese, sell out our education, our culture.* These matters, I hope the MCA would keep the 2-acre of land, it is better. We want more land. We want to gain it through our own effort of blood and sweat. In MALAYA, if we can exert our effort to work, are we afraid of not capable of buying a few acres of land? But you join the MCA, may also not be able to get 2-acre of land. Those lands are to be distributed to whom? Distributed to their president, distribute to their secretary. Ordinary members they will not give you. If you can shoulder the post of president, if you can shoulder the post of Secretary, or your name is followed by that title, PJK, AMN, or PPM, those people only have the opportunity of getting land. Ordinary ones, there is no opportunity. Therefore the more important thing is not the land. What we want to apply for is not that 2-acre of miserable land. It is hoped that we all can understand this point. Furthermore, the councillor of GEMAS. GEMAS is MCA Councillor. He too, is a very big, very powerful councillor, is an executive councillor. That day, he went to my constituency. In fact, among the executive councillors, in the executive assembly, the power of an executive councillor is extremely great. He can do anything he likes. He has very great power. This GEMAS State Assemblyman came to my Constituency, 'JIMAH'. He told the villagers over there. He said, 'You all, today, I came over here, is to tell you all, government is going to distribute land to you all. You all must apply'. I say, 'Very good, if the government is sincere in distributing land to the people, distributing housing site, distributing the land inside the new village to the people, we, the DAP support it. Very good'. But I say, 'Being an executive councillor, you don't even understand the 'Law', the 'undang2' of the government. Really very pitiful'. I believe that he did not attend the executive assembly meeting. For the sake of making big profit, he has not attended the meeting. The people of our new village have applied for housing site for over 10 years, some even for 20 years. Last month, he went over there to ask the people to reapply. Every year they have applied. He still asked the people to apply. I say, If he is an executive councillor, looking after the people's interests, he should, at the executive assembly meeting, request the government to distribute land, immediately distribute land to the people'. But he did not do so. In the State Assembly, when we, the DAP, brought forth the problem on land, the land resolution, asking the government to distribute land to the people, the MCA opposed our resolution. This point will prove that they are not honest. They do not intend to distribute land to the people. Therefore, I tell 'JIMAH', that GEMAS State Assemblyman not to come to my constituency to deceive the people. People have already applied for land, for 10 years, 20 years. Government should send to them, one sheet, one sheet of 'Grant' of land; should

reduce that quit rent, it is best not to collect quit rent. Send 'Grant' to them and not asking them to apply. After applying, that form in 'D.O.'s place was lost. The form was lost. When you go to enquire from him, he said, 'When did you send it? I have not received it. Give you one more sheet'. Send it again, again it was lost. This is the government. The administration of the ALLIANCE Government is like this. That State Assemblyman is also like a fool, like a rice pot (good for nothing). Rice pot State Assemblyman went to my New Village to ask the people to apply for land. He should immediately give the grant of land to the people and not to go there to deceive the people. Then there are still State Assemblymen of two more Constituencies. 'KOTA' 'TERENTANG', these two are also Malay extremists. In the State Assembly, have not brought forth good ideas, how to improve the people's living. In the State Assembly, they can only attack the DAP. These are the conditions of the four State Assemblymen of TAMPIN/REMBAU.

I wish to take this opportunity to talk to all of us. In the year of 69, I participated in SEPANG Parliamentary Constituency. My opponent is the present Minister of Health, 'Tan Sri' LEE Siok Yew. A few months ago, he was still 'Encik' LEE Siok Yew. He was given the title of 'Tan Sri' on 'Agong's birthday, so now, he must be addressed as 'Tan Sri' LEE Siok Yew. Formerly, I respected him very much because he did not become a minister. We want to respect him. However, after the General Elections of the year of 69, when I see him, I want to spit. Not worth respecting. Why? I tell you. I participated the SEPANG General Elections in the year of 69, many people supported us. Everyone, the people over there, render money and service voluntarily to support us. So, even though it was the first time of participating the election, we, I did not lose much, only lose to him 1,700 votes, not much. Almost won it. This made him afraid. At the first counting of votes, I lost to him by 700 votes only. Wah! He said, 'This unknown fry, how can he lose like this? Beat him by so little? Not satisfy, recount.'

'D.O.' had no way out except to recount, recount. Some of the Rocket votes, he also put them into Sailing Boat. He said, 'This has some opportunity. But into his, count as his votes.' Therefore he obtained 1,700 votes. Never mind then, lost to him, we are satisfied. We, the DAP, admitted defeat when we lost. ULU SELANGOR, lost, there was no MAY 13. *However, ALLIANCE lost, then there was the MAY 13. DAP lost, there was not MAY 13. I guarantee. REMBAU/TAMPIN, if the DAP loses, there would be no MAY 13. If the ALLIANCE loses, I dare not guarantee.* Want then to guarantee. So LEE Siok Yew is like this. He won by not much, he became angry. He arrested my agent, arrested my agent. At the time of MAY 13, he said, 'You are secret society'. Putting the secret society cap on, arrested, for nothing was arrested by him for six months. Was it he who furnished the information to the police to arrest? It must certainly be him. Other than he, there was no other person. He really stinks. Therefore I say today, 'I see Lee Siok Yew, I will spit with him'. He is no longer a respected minister. After becoming the Minister of Health, what did he say? He said, 'Our General Hospitals must have classless wards'. This is a very good idea. Everybody supports it. The next day, he changed again. He said, 'This is my personal idea, not that of the government'. Why did he say like this? Because he was afraid. Because he was afraid that if he were to enter the General Hospital tomorrow, classless, he would have to stay together with those poor people. He was afraid. He himself, wanted to stay in the air-conditioned room, 1st class air-conditioned room, 1st class General Hospital. It is because that when it has become classless, the Ministers, the wives of Miniters, must sleep together with all people. Because he is afraid. He said, 'This is my personal idea and not that of the ALLIANCE Government'. I challenge him. I say, 'This idea is very good, should be implemented immediately, implemented immediately'. Having become a Minister of Health, what has he achieved? If there are no achievements in the year of 74, we go back again.... (Reverse side of tape)

They have no where to go in MALAYA, nowhere to go, no means of finding employment. Some have only passed L.C.E., Junior Middle. They can go to ENGLAND for training. However, in MALAYA, with Cambridge Certificates, Grade II or Grade I, there is no means of applying to become nurses for training. Hence they are forced with no other means but to go to ENGLAND for training. At present, LEE Siok Yew shoulders the post of Minister. He then said, 'Must pull them back. If those nurses in ENGLAND do not come back to MALAYA to serve, they are disloyal'. How can it be like that? MALAYA has plenty of unemployment. I tell LEE Siok Yew. There are Senior Middle students, Senior Middle girl students of Chinese schools, many are unemployed. LEE Siok Yew, he should use this opportunity to absorb those Chinese school graduated students, give them an opportunity for training, let them become nurses. Not only can the problem of shortage of Malayan hospital nurses be overcome, at the same time, we can give a Chinese educated student an opportunity of finding work to do. I want to tell him this idea. Although I am not a Minister, I am bringing forth idea to him, hoping that he will be able to accept.

There is still an unequal item, what is it? Everyday when we all return home to rest, we switch on the Television (T.V.), what programmes do we see? xx xx xx Just calculated a little while ago, there are 90 hours of T.V. programmes in a week. 90 hours, how many hours of Chinese programmes are there? Not more than 5 hours. That is to say, equivalent to 5% of the programmes. How much is our population? 35% to 40%! Our programmes have only 5%. Because at present, the UMNO are talking percentage with us. Therefore, we also talk percentage with it now. It said that within 20 years, Malays must possess 30% of the industrial and commercial enterprises. Therefore I say that we must also have percentage in the T.V. Not 5% will do. Our population has this much percent, 5% T.V. programmes is unable to reflect the conditions of Malaysian multi-races. This 5% is not enough. MALAYSIA cannot survive by merely depending on one race. It can only survive with the co-operation of the three major races. Therefore the three major races, their languages, cultures; their status must also be respected, to be able to do so. This point, it is hoped that when the MCA next comes to hold a mass rally in TAMPIN, it will be able to expound on this problem. Why are they not able, not dare to bring forth this problem in the parliament? LIM Kit Siang brought forth this problem, the problem on T.V., the problem on radio broadcasting. The Chinese programmes of radio broadcasting are unprincipled and monstrous, not knowing what they are talking. They are interspersed with many miscellaneous oddities, unprincipled and monstrous. Kit Siang brought it forth but he received encircled attack! MCA, UMNO, everyone attacked him and said that this was chauvinism. If a person tells the fact, he is chauvinism, he is Communist Party. This ALLIANCE (T/N:- Engine stopped at 9.12 and restarted at 9.25) I wish to apologise to all of you. Our masses... there is no means. Our LIM Kit Siang in MALACCA, has a meeting today, explaining matters within the party to the branches and to the representatives. Therefore, just now, at 9 o'clock, he is almost leaving to come over here to attend our mass rally. Just now, I talked about UMNO, MCA. Because they are afraid of the opposition parties. Previously, the Labour Party, it said, 'You are the Communist Party'. Put the cap on it. Hence their leaders had all been arrested and put to jail. Now, the Labour Party has been dissolved. DAP, it said, 'You are chauvinism. Kit Siang is chauvinism. He can only strive for the interest of the Chinese'. It is using this point to split our party, to make the Malays, the Indians, not daring to join the DAP. Therefore, if we talk too much, too drastic, he also wants to arrest. However, to indulge in politics, we are not afraid of arrest. If afraid of arrest, then don't join politics. So we talk facts. If we speak out the words in the people's heart and be arrested we are not afraid. To be in jail, it is better still, to eat free curry rice. Hence the conditions of MALAYA is unfair like this. T.V. 5% of Chinese programmes.

Army, in the army, 100% are their people. This is unfair. We want to speak, to speak it out. MALAYSIA wants to be multi-racial. We, the DAP, proposes that MALAYSIA wants a multi-racial army, not of one race. MCA professes to represent the Chinese, do they dare to talk? What about the conditions in the army? Very dangerous, isn't it? The power of the army is not in your hands, it is really dangerous. Dares the MCA speak? Dares not speak. I dare to speak. Arrest, so be it! Still want to arrest, then let him arrest! But if this problem is not brought forth, it is really dangerous. UMNO says, 'Economy is in the hands of the Chinese'. Therefore, if there is political strength, UMNO says, 'With political power and without economic strength, very dangerous'. It

says, 'One day, the Malays will be chased out by other people'. It utilises such saying to attract the Malays to support them. So they now have political strength, have economic strength. In fact, the economic strength is not in the hands of the Chinese. Of 100 Chinese, only one is rich, 99 others are poor Chinese. It said that the economy is in the hands of the Chinese. This is telling lie. To divert the people's line of vision, to divert the Malays' line of vision, so that they can always remain in that post. However, the MCA dares not deny, the MCA dares not say that the political strength is not with the Chinese, even the military strength is not in the hands of the Chinese. If the MCA is holding a mass rally over here tomorrow, I will ask it to explain on these three problems. Why can't they speak? Why don't they dare to speak? These are very important problems. Economy, politics, military. *MAO Tse-Tung also says, 'Power, political power grows out of gun barrels'. Without the army, what strength you can talk about. With money, without* strength, *it is useless.* Hence this is very important. These are unfair. If MALAYSIA belongs to the Malaysians, we cannot conceal these problems. We want to discuss publicly. They do not tackle the major issues but the minor ones. After LIM Kit Siang had brought forth the New Village problem, Tun RAZAK quickly appointed a New Village Minister, LIM Keng Yaik. The report of MCA describes LIM Keng Yaik as the rebirth of PAU KUNG! Hee! I say letting of gas! (nonsense). LIM Keng Yaik is only a postman, ordinary postman! Any problem in the New Village, he said, 'You all write it out and send it to me. I will hand it over to Tun RAZAK'. However, we all know that the land problem in the New Village is not the problem of the Central Government. It is not Tun RAZAK's matter! It is the Mentri Besar's matter! It is the matter of the State! But in the State, we, the DAP, brought forth the land problem, they said that it could not be passed. Cancelled. Even the MCA Councillors, he too opposed. LIM Keng Yaik is useless like this. Rebirth of PAU KUNG! This is the staff to deceive the people! So he said that he could not achieve anything. He then asked us, the Chinese to join the 'FLDA'. He said, 'There are 10-acre of land over there, which can be applied'. *However, only how many people can obtain 'FLDA'? Over* there, *99.9% belongs to the Malays, to Malays, to be allotted to the Malays.* How to apply? After LIM Keng Yaik had spoken these words, that 'MUSA HITAM', Chairman of 'FLDA', he then announced the freeze, cannot apply, cannot apply for land. LIM Keng Yaik had also said before that if he was unable to apply and get anything for the new villagers, he would resign. I say, 'He should resign immediately. He is not fit for the seat of a minister.' So, I have spoken too much today. Some may be seditious. He, the police has 'tape-recorder' to record it. Tomorrow, he sends it to Special Branch. He says, 'This OH Keng is too much, must have him arrested.' I see that it is better for me to stop my speech here. Thanks to all of you."

Counsel for the defence objected to the whole speech being included in the charge on the ground that the defence would not be in a position to know whether the whole speech was alleged to be seditious or only part of it. He said that it was important for the defence to know exactly which parts of the speech were alleged to be seditious and therefore only those parts should be incorporated in the charge. The learned trial judge overruled this objection, as he thought there was nothing improper in annexing the whole speech to the charge, for he said (this point was conceded by both counsel before us) the speech had to be considered as a whole in order to decide whether it was seditious or not. However, at the end of the prosecution case the learned judge directed the D.P.P. to underline (and the D.P.P. complied) the particular passages which the prosecution said were seditious.

At the end of the prosecution case the learned judge acquitted the accused without calling on his defence.

At the trial the prosecution contended that many passages in the speech were seditious, but here before us they maintained that only two passages were seditious, namely the passage dealing with the incidents of May 13, 1969, and the passage dealing with the Army.

The first passage reads as follows: —

"Our condition made the ALLIANCE to be in great fear. Therefore they brought about the MAY 13 incidents. In the MAY 13 incidents, we all know who created it. We, the DAP challenged the Government, asking it to set up a Commission of Inquiry to investigate into MAY 13, who caused it. Many people died in MAY 13, who was responsible for it? This was brought about by some racialists. Some who feared to lose his position, he who feared of not becoming the Mentri Besar, he who feared of not becoming State Assemblyman, he who feared of not becoming Member of Parliament. Therefore he brought about a May 13 incidents. I shall give an example. Just like in a football tournament or a basketball tournament, why do they fight suddenly in the process of play? Who created it? Was it created by the winning side? No, it was certainly created by the losers. So, the same conditions apply in politics. May 13 was created by those losers. Why was the government afraid? Why did it not want a Commission of Inquiry to investigate into the truth? Why did the MCA have no courage to stand out and explain to the people? Therefore, the MCA and the UMNO, they are indulging in racialism, in dirty politics. They want to intimidate, using bloodshed to intimidate the people."

The learned judge hold that this was not seditious. He said at page 112 of the appeal record: —

"The accused referred to the May 13 incidents and said that the government had failed to set up a Commission of Inquiry to investigate the causes of the incidents. The DAP had asked for an inquiry and he criticised the MCA for not doing so. The accused said further that the incidents were brought about by racialists who were afraid of losing their positions in the government. This statement by the accused and his reference to May 13 might be somewhat sensitive but it does not come within the definition of seditious tendency under the Sedition Act."

The second passage reads as follows: —

"Army, in the army, 100% are their people. This is unfair. We want to speak, to speak it out. MALAYSIA wants to be multi-racial. We, the DAP, proposes that MALAYSIA wants a multi-racial army, not of one race. MCA professes to represent the Chinese, do they dare to talk? What about the condition in the army? Very dangerous, isn't it? The power of the army is not in your hands, it is really dangerous. Dares the MCA speak? Dares not speak. I dare to speak. Arrest, so be it! Still want to arrest, then let him arrest! But if this problem is not brought forth, it is really dangerous. UMNO says, 'Economy is in the hands of the Chinese'. Therefore, if there is political strength, UMNO says, 'With political power and without economic strength, very dangerous.' It says, One day, the Malays will be chased out by other people.' It utilises such saying to attract the Malays to support them. So they now have political strength, have economic strength. In fact, the economic strength is not in the hands of the Chinese. Of 100 Chinese, only one is rich, 99 others are poor Chinese. It said that the economy is in the hands of the Chinese. This is telling lie. To divert the people's line of vision, to divert the Malays, line of vision, so that they can always remain in that post. However, the MCA dares not deny, the MCA dares not say that the political strength is not in the hands of the Chinese. If the MCA is holding a mass rally over here tomorrow, I will ask it to explain on these problems. Why can't they speak? Why don't they dare to speak? These are very important problems. Economy, politics, military. MAO Tse-Tung also says, 'Power, political power grows out of gun barrels'. Without the army, what strength you can talk about. With money, without strength, it is useless. Hence this is very important."

The learned judge held that this was not seditious either. He said at pages 112 and 113: —

"... the accused referred to the army. He said that the army consists of their people which in the context of the

speech refers clearly to one race. The accused says that Malaysia being a multi-racial country its army should not consist of one race but should be multi-racial. I must say that this particular passage taken into isolation might well come near to having a seditious tendency for it might be inferred that the government is partial to only one race in recruiting people into the armed forces. However, this passage ... has to be read together with the whole speech and in my view it cannot be said that taking the speech as a whole the accused had charged the government with such gross partiality as to have a tendency to raise discontent or disaffection amongst the subjects of the country. I agreed with Mr. Yeap Ghim Guan that when the accused said that the army was 100% their people he was speaking figuratively. So too when he quoted Mao Tse-Tung the accused was trying to impress his audience that he was well acquainted with the works of the Chinese leader."

Now the question before us is whether or not the passages in question were seditious.

Sedition is dealt with in the Sedition Act 1948 (Revised — 1969) Act 15. By section 2 a speech is seditious if it has a seditious tendency. Seditious tendency is defined by section 3(1) which contains paragraphs (a) to (f).

We are only in partial agreement with what the learned trial judge considered to be the proper approach to the question as to whether those parts of the speech now alleged by Mr. Mahalingam to be seditious are indeed so. We agree that particular words or sentences taken out of context "may sound obnoxious or innocuous and that this might convey an altogether wrong impression". However to say that to determine whether particular passages are seditious the speech in which such words are uttered should be read as a whole is, with respect going too far if by that is meant that in a long speech two passages (or for that matter four) cannot be seditious if numerous other topics discussed are not seditious. At most one could say that the speech as a whole would assist in giving the court a proper perspective of, and so assist it to decide whether the passages giving offence were mere episodes of over exuberance in a speech coming fairly under the exceptions envisaged in section 3(2) or something more than that. Again whilst we would with respect agree that the prosecution is not obliged to prove that anything said in the speech was true or false, evidence to show that the allegations made were false whether wilfully or inadvertently so, would increase the likelihood that such utterances would have a seditious tendancy. For instance to suggest falsely that the army is composed 100% of one ethnic group, because of Government policy to favour such ethnic group to ensure its political hegemony can be expected to bring into hatred or contempt or to excite disaffection against the government — section 3(1)(a) or to promote ill-will etc. between two ethnic groups — the Malays and the Chinese — section 3(1)(c). That is where the uncontradicted evidence of Col. Yaacob (PW11) on the racial make-up of the army, and on recruiting policy is highly relevant.

We agree that to determine whether the speaker had exceeded the bounds of free speech here, the contemporary situation has to be taken into account. If there is a state of unrest, of strained relations between the different ethnic groups in this country, a tendency to bring about one of the undesirable results set out in section 3(1)(a) to (c) would be more likely than if the situation is such that peace and harmony have ruled for decades. But whether the setting of the utterances complained of is a local by-election or a general election is with respect not a relevant matter. Here there was a crowd of a few hundred, but I should think that words having a tendency to bring about hatred or contempt etc. of any Ruler or against any Government, or to promote feelings of ill-will and hostility among the various ethnic groups etc. can be uttered before a handful of persons and yet be seditious under our law.

Before us Inche Mahalingam abandoned that part of his appeal on two of the passages alleged to be seditious at the trial — those dealing with education and land alienation.

Be that as it may, it should be noted that the same 4 matters were raised in the speech which lead to *Fan Few Teng's*[2] prosecution and conviction. Indeed, it seems to us that respondent had in his speech dealt with these very matters at greater length and with greater vehemence. The only factor which can be said to be in respondent's favour was that it was made on behalf of a Malay candidate. However the race of the candidate espoused seems to us to have been completely forgotten in a speech meant for a Chinese audience the tenor of which was to belabour the perennial racial issues — Chinese versus Malay — and to make extravagant allegations of gross partiality of a Government towards the latter ethnic group to the detriment of the former, with such vituperation and in such exaggerated terms as to make the promotion of feelings of ill-will and hostility between the two ethnic groups (and between the Malays and other minority groups) an unavoidable tendency. The constant repetition of these issues invested them with distinctive communal connotations synonymous with doing away with the special privileges of the Malays permitted by the Constitution.

From his speech it is clear that the respondent knew that the police were present and that his speech was being taped. Whilst some may be expected to be cautious in their utterances under such circumstances, it seems to us that the respondent was stirred by such knowledge into acts of oral bravado.

Whatever his intention might have been respondent has in our view gone beyond the limit of freedom of speech, that both passages are not legitimate criticism of the sort permissible under section 3(2) of the Act, but utterances clearly having a seditious tendency of the sort envisaged in both section 3(1)(a) and 3(1)(c).

We would therefore allow the appeal, set aside the order of acquittal and in its place direct that the respondent be called upon to make his defence.

Appeal allowed.

Solicitors: *Yeap Ghim Guan & Co.*